

WETLANDS COUNCIL

MINUTES

October 26, 2004

The Wetlands Council met on Tuesday, October 26, 2004 at the Department of Environmental Services, 29 Hazen Dr., Concord, NH

Attendees: Brian K. Fowler, Chairman; Sharon Champagne, Thomas G. Chrisenton, John S. Cobb, Ben Frost, Camilla Lockwood, Lawrence E. Morse, Glenn Normandeau, Russ St. Pierre, and Thomas Sloan

Absentees: William M. Dannehy, William Ingham, Jr. and John St.C. White

The meeting was called to order by Chairman Brian Fowler at 9:10 a.m.

1. Approval of Minutes of August 10, 2004 Meeting

A motion was made by Councilor Cobb and seconded by Councilor Lockwood to accept the minutes of August 10, 2004 as presented. It was unanimously voted.

2. Status of Appeals

Michael Sclafani, Appeals Clerk, distributed an Appeals Status Report and reviewed the report with council members.

- Docket No. 02-16 WtC - Donald S. Thompson: WB #2002-01019
A stay remains in effect pending the outcome of an enforcement action initiated by DES to revoke the permit which is the subject of this appeal.
- Docket No. 03-02 WtC – Philip and Judith Mills: WB #2002-00922
The appellants filed a withdrawal of this appeal on September 13, 2004.
- Docket No. 03-03 WtC - Joseph J. Smith: WB #2001-00787
This case has been appealed to the New Hampshire Supreme Court.
- Docket No. 03-11 WtC - Town of Barrington
A stay remains in effect. Attorney Kinder who represents the Town of Nottingham advised Mr. Sclafani that this appeal is likely to be withdrawn before the next council meeting.
- Docket No. 03-17 WtC - Roy and Myra Gordon: WB #2002-02335
This appeal was heard on August 10, 2004 and a written Decision & Order to deny the appeal was issued on September 1, 2004. On September 21, 2004

appellants filed a Motion for Reconsideration. The applicant filed an Objection to Motion for Reconsideration and Memorandum of Law on September 27, 2004. On October 8, 2004 a written Decision & Order to deny the Motion for Reconsideration was issued.

- Docket No. 04-07 WtC - Christopher Krochina: WB #2003-00183
On August 12, 2004 a pre-hearing order was issued along with a hearing notice for November 9, 2004 at 1:00 p.m. Pre-hearing memoranda were filed by the applicant on October 13, 2004, by DES on October 15, 2004, and by appellant on October 18, 2004. On October 20, 2004 applicant filed a Reply to DES' Pre-hearing Memorandum. DES filed a Reply Memo and Motion to Strike on October 22, 2004. On October 25, 2004, appellant filed a Motion to Supplement the Record, Motion for Summary Judgment, Response to Applicant's Pre-hearing Memo and Response to DES' Pre-hearing Memo. Parties have until November 2, 2004 to respond to motions.
- Docket No. 04-08/09 WtC - GCC/CLF: WB #2002-01268
On August 13, 2004, a Certified Record was filed with the council by the Wetlands Bureau. On October 4, 2004, pre-hearing memoranda were filed by applicant Endicott General Partnership, appellant Conservation Law Foundation ("CLF") and appellant Greenland Conservation Commission ("GCC"). Also on October 4, 2004, Attorney Jed Callen filed an appearance on behalf of GCC. On October 12, 2004, applicant filed a consented-to Motion for Recusal of Council Member William Ingham, Jr., and DES filed a Reply Memorandum. On October 13, 2004, appellant CLF filed a Motion to Strike DES' Reply Memorandum and applicant filed a Motion to Strike Portions of appellant GCC's Pre-hearing Memorandum. Appellant GCC filed an Objection to applicant's Motion to Strike on October 14, 2004. On October 15, 2004, DES filed an Objection to the applicant's Motion to Strike and an Affidavit of Colleen L. McDuffee. The appeal hearing is scheduled for today.
- Docket No. 04-11 WtC - Jeannette and Lauren Boss: WB #2001-00982
On August 11, 2004 a pre-hearing order was issued along with a Notice of Hearing for January 11, 2005 at 10:00 a.m.
- Docket No. 04-13 WtC - Mark E. Young: WB #2003-02680
On August 11, 2004 a pre-hearing order was issued along with a Notice of Hearing for November 9, 2004 at 9:00 a.m. On October 15, 2004 Appellant and DES filed pre-hearing memoranda. Appellant filed a Reply to DES' Pre-hearing Memorandum on October 22, 2004.
- Docket No. 04-20 WtC - 27 Members of Focus Tamworth: WB #2004-00377
This is an appeal of a September 14, 2004 denial of a request for reconsideration of a permit granted to Motorsports Holdings, LLC to construct a race track facility in Tamworth. The Notice of Appeal was filed on October 14, 2004 along with an appearance by Attorneys Young and Serrell on behalf of the appellants. Mr. Sclafani issued a letter acknowledging receipt of appeal on October 15, 2004.

Councilor Morse recused himself from discussion and vote on this appeal.

Councilor Normandeau made a motion to accept the appeal. The motion was seconded by Councilor Lockwood and unanimously voted with Councilor Morse abstaining.

- Docket No. 04-21 WtC - Lakeshore Realty Trust: WB #2001-01294
This is an appeal of the September 24, 2004 Administrative Order WD 04-22 regarding the construction of a boathouse on Lake Winnepesaukee in Alton. The Notice of Appeal was filed on October 22, 2004 along with an appearance by Attorney Robert C. Varney on behalf of the appellant.

Councilor Champagne made a motion to accept the appeal. The motion was seconded by Councilor Cobb and unanimously voted.

3. Wetlands Bureau Update

Collis Adams, Wetlands Bureau Administrator, addressed the council.

- a. In-lieu Fee Program
The in-lieu fee program workgroup is in the process of drafting rules, which Mr. Adams expects to be finalized by early 2005. A legislative service request has been initiated for a statute change which will allow DES to accept and expend monies under the in-lieu fee program.
- b. Wetlands Bureau Staffing
Mr. Adams indicated that the Wetlands Bureau has several unfilled positions due to the hiring freeze. This has affected the Bureau's ability to render decisions as timely as in the past, but the bureau is within the statutory requirements.

9:25 Ben Frost arrived

- c. Shoreland Protection Act
In response to councilors' questions, Mr. Adams explained that Attorney Jennifer Patterson has met with Wetlands Bureau staff regarding the recent opinion issued by the Attorney General's Office on the Shoreland Protection Act ("SPA"). When an application is submitted, the Bureau will now look at all activities that are proposed on a site and make a determination whether or not the project meets the minimum standards of the SPA.

Mr. Adams has prepared a packet of materials which will be going out to all municipalities and Wetlands Council members explaining DES's interpretation of the SPA. The Attorney General's opinion letter and most recent version of the SPA rules and statutes will be included in the packet. Municipalities will be responsible for making sure that any building permits issued are in conformance with the SPA. Educational sessions will be hosted by DES and information will also be posted on DES's website.

Mr. Sclafani added that council jurisdiction will be determined by the underlying permit from which a SPA issue arises. The Wetlands Council will hear those appeals which stem from Wetlands Bureau permitting decisions. The Water Council will hear appeals stemming from Subsurface Bureau and

Site Specific Section permitting decisions and administrative orders issued by DES.

Chairman Fowler requested that Attorney Jennifer Patterson of the Department of Justice be invited to attend the January 2005 council meeting to discuss the recent SPA opinion.

4. **Old Business**

There is no old business to come before the Council.

5. **Other Business**

Mr. Sciafani introduced Attorney Kerry D. Barnsely, DES's compliance attorney.

6. **Next Meeting**

The next council meeting is scheduled for November 9, 2004, at which time the following appeals are scheduled to be heard:

9:00 a.m. Docket No. 04-13 WtC - Appeal of Mark E. Young

1:00 p.m. Docket No. 04-07 WtC - Appeal of Christopher Krochina

There will not be a meeting in December. A meeting will be held on January 11, 2005.

7. **Adjournment**

Councilor Normandeau made a motion to adjourn. Councilor Cobb seconded the motion and it was unanimously voted.

The meeting adjourned at approximately 9:45 a.m.